

CHAPTER 2021-172

Committee Substitute for Committee Substitute for Senate Bill No. 354

An act relating to restitution; amending s. 775.089, F.S.; providing for the purposes of restitution in a criminal proceeding; specifying the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award under certain circumstances; amending s. 985.437, F.S.; providing for the purposes of restitution in a delinquency proceeding; specifying the standards for valuation of a restitution order; authorizing a court to consider hearsay evidence regarding valuation of a restitution award under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(7)(a) While the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the criminal justice system.

(b) Restitution must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution.

(c) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The court may consider hearsay evidence for this purpose, provided it finds that the hearsay evidence has a minimal indicia of reliability. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. The burden of demonstrating the present financial resources and the absence of potential future financial resources of the defendant and the financial needs of the defendant and his or her dependents is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

Section 2. Subsection (2) of section 985.437, Florida Statutes, is amended to read:

985.437 Restitution.—

(2)(a) While the primary purpose of restitution is to compensate the victim, it also serves the rehabilitative and deterrent goals of the juvenile justice system.

(b) The court may order the child to make restitution in money, through a promissory note cosigned by the child’s parent or guardian, or in kind for any damage or loss caused by the child’s offense in a reasonable amount or manner to be determined by the court. Restitution must be determined on a fair market value basis unless the state, victim, or child shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The court may consider hearsay evidence for this purpose, provided it finds that the hearsay evidence has a minimal indicia of reliability.

(c) When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make.

Section 3. This act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.